IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

JOSE NEVAREZ and	§	
BRITTANI NEVAREZ	§	
	§	
PLAINTIFF	§	
	§	
VS.	§	**CASE NO. _______________**
	§	
ORACLE FINANCIAL GROUP, LLC;	§	
MICHAEL COLLINS;	§	
DAN HENMAN;	§	
ALEXANDER JUDGE;	§	
CORY DODSON and	§	
JOHN DOES 1-5	§	
	§	
DEFENDANTS	§	

ORIGINAL COMPLAINT
and JURY DEMAND

NOW COMES JOSE NEVAREZ AND BRITTANI NEVAREZ, (collectively, "Plaintiff" or "Plaintiffs" file this, their ORIGINAL COMPLAINT (the "Complaint"), against the following:

1. ORACLE FINANCIAL GROUP, LLC;
2. MICHAEL COLLINS;
3. DAN HENMAN;
4. ALEXANDER JUDGE;
5. CORY DODSON and
6. JOHN DOES 1-5

and would show this Court as follows:

JURISDICTION and VENUE

1. Jurisdiction of this Court arises under 28 U.S.C. § 1331 and 15 U.S.C. § 1692k(d).

2. Supplemental Jurisdiction exists pursuant to 28 U.S.C. § 1367.

3. This action arises out of Defendants' violation of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, et seq. (hereinafter referred to as "FDCPA"), and the Texas Finance Code § 392.001, et seq (hereinafter referred to as "TFC").

VENUE

4. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b), in that Defendant Oracle transacts business in this District and a substantial portion of the acts giving rise to this action occurred in this District.

5. Plaintiffs reside in this Judicial District.

PARTIES

6. Plaintiffs' are individuals and Citizens of the State of Texas with their residence being located in Collin County, Texas and are "consumers" as the term is defined by 15 U.S.C. § 1692a(3) and Tex. Fin. Code § 392.001(1).

7. Defendant ORACLE FINANCIAL GROUP, LLC is a Limited Liability Company which is organized under the laws of the State of Delaware. Defendant Oracle maintains it principal place of business in the State of New York. Defendant Oracle is authorized to do business in the State of Texas. Service may be made upon its registered agent in Texas, C.T. Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201. According to Oracle's Texas Franchise Tax Public Information Report Oracle has one owner/member who is identified as Gregory G. Cipressi who is a resident of the State of New York.

8. Defendant Michael Collins is purported to be an individual who is resident of the State of New York. Service may be made on him at his place of business located at 1885 Harlem

Road, Suite 200, Buffalo, New York 14212. Plaintiffs are unsure if this name is that of a real person or a fictitious name of a person in the employ of Defendant Oracle.

9. Dan Henman is purported to be an individual who is resident of the State of New York. Service may be made on him at his place of business located at 1885 Harlem Road, Suite 200, Buffalo, New York 14212. Plaintiffs are unsure if this name is that of a real person or a fictitious name of a person in the employ of Defendant Oracle.

10. Alexander Judge is purported to be an individual who is resident of the State of New York. Service may be made on him at his place of business located at 1885 Harlem Road, Suite 200, Buffalo, New York 14212. Plaintiffs are unsure if this name is that of a real person or a fictitious name of a person in the employ of Defendant Oracle.

11. Cory Dodson is purported to be an individual who is resident of the State of New York. Service may be made on him at his place of business located at 1885 Harlem Road, Suite 200, Buffalo, New York 14212. Plaintiffs are unsure if this name is that of a real person or a fictitious name of a person in the employ of Defendant Oracle.

12. JOHN DOES 1-5 would be individual persons who's identity is presently unknown to the Plaintiffs. They would all be employees or acting for or in concert with Defendant Oracle Financial Group, LLC.

13. Each Defendant collects, and attempts to collect, debts incurred, or alleged to have been incurred, for personal, family, or household purposes on behalf of creditors using the United States, telephone, and through the use of the internet.

14. Each Defendant is a "debt collector" as defined by 15 U.S.C. § 1692a(6).

FACTUAL ALLEGATIONS

15. Sometime prior to the filing of this Complaint, Plaintiff Jose Nevarez incurred a financial obligation that was used primarily for personal, family or household purposes (hereinafter

the "Account"). Specifically, money was borrowed from Ace Cash Express for emergency medical expenses.

16. After making payments on the account for a period of time the account allegedly went into default with the original creditor prior to the filing of this Complaint.

17. After the Account allegedly went into default, the Account was placed with or otherwise transferred to Defendant Oracle for collection.

18. Defendant Oracle is a “debt collector” as that term is defined by 15 U.S.C. § 1692a(6) and Tex. Fin. Code § 392.001(6) and is a “third-party debt collector” as that term is defined by Tex. Fin. Code § 392.001(7).

19. The principal purpose of Defendant Oracle is the collection of debts using the mails and telephone and other means.

20. Defendants Michael Collins, Dan Henman, Alexander Judge, Cory Dodson and John Does 1-5 are a “debt collector” as that term is defined by 15 U.S.C. § 1692a(6) and Tex. Fin. Code § 392.001(6) and are “third-party debt collector” as that term is defined by Tex. Fin. Code § 392.001(7).

21. The Account constitutes a “debt” as that term is defined by 15 U.S.C. § 1692a(5) and is a “consumer debt” as that term is defined by Tex. Fin. Code § 392.001(2).

22. Plaintiff disputes the Account.

23. Plaintiff requests that Defendants, each and every one of them, cease all further communication on the Account.

24. Prior to the date of the filing of this Complaint, beginning in approximately January 2016, and at various times thereafter Defendants made telephone calls to Plaintiffs to collect the Account.

25. These calls include, but are not limited to, the following:

a. A call from a person who identified himself as Michael Collins to Plaintiff Brittani Nevarez stating that she would have a had until the close of business on February 12, 2016, to pay $2,400.00 or they would call Collin county and issue a warrant for Jose.

b. A call from a person who identified himself as Michael Collins to Plaintiff Jose Nevarez stating that he would have a warrant issued for his arrest and that his license would be revoked.

c. A call with a person who identified himself as Michael Collins with Plaintiff Jose Nevarez stating that if Plaintiff Jose Nevarez could pay $2,400.00 now he would not file a warrant or revoke his license in Collin County, Texas. When informed that Jose could not come up with that kind of money on such a short notice Mr. Collins responded that you have till the end of business and good luck.

d. A call on or about February 11, 2016 at 12:33 p.m. from Defendant Michael Collins directed to Plaintiff Jose Nevarez wherein Defendant Collins stated that charges were being filed against Plaintiff Jose Nevarez concerning a case of fraud with American National Bank. Defendant Collins further stated that failure to return this call may institute an immediate license revocation, issuance of wants and warrants, etc.

e. A call on or about February 19, 2016 at 10:54 a.m. from Defendant Dan Henman who stated he was with National Courier Services. He stated, among other things, that he had Plaintiff Jose Nevarez scheduled to be served some papers with the contact person being Defendant Michael Collins on case docket number 1414843.

f. A call on or about February 29, 2016 at 8:35 a.m. Defendant Alexander Judge to Plaintiff Brittani Nevarez stating, among other things, that they were looking to pursue a charge of fraudulent payment over state and county lines for Plaintiff Jose Nevarez as well as the original charges discussed. Again case docket number 1414843 was stated.

g. A call on or about February 29, 2016 at 10:39 a.m. from Defendant Cory Dodson, who stated, among other things, that Plaintiff Jose Nevarez was being contacted due to his non sufficient fund status with the account through Ace Cash Express. If no word is received by 4:00 p.m. the settlement offer we have given becomes null and void and they can proceed for the balance in full.

26. Defendants represented to Plaintiff that his “case” had file number 1414843 and it was filed with Collin County. This, of course, is a false statement.

27. The conduct by Defendants described above caused Plaintiffs to be afraid that a legal action had been filed against them.

28. As of the filing of this complaint, however, no lawsuit has been filed against Plaintiff on the Account, despite the representations made to Plaintiffs, no criminal actions have been filed, and no action to revoke any license of Plaintiffs has been taken.

29. Defendant Oracle’s employees said the things described above in hopes that the fear provoked in Plaintiffs would cause Plaintiffs to make a payment on the alleged debt.

30 Additionally, in some or all of the communications between Plaintiffs and Defendants described above, both Defendants failed to inform Plaintiff that the communication was from a debt collector and failed to provide meaningful disclosure of their identity.

31. The purpose for the calls described above was to attempt to collect the alleged account.

32. The calls each individually conveyed information regarding the account directly or indirectly to Plaintiffs.

33. The calls each individually constituted a “communication” as defined by 15 U.S.C. § 1692a(2).

34. The only reason that Defendants made calls to Plaintiffs and had conversations with Plaintiffs was to attempt to collect the Account.

35. The only reason that Defendants left messages for Plaintiffs was to attempt to collect the Account.

36. The statements and actions of Defendants constitute illegal communication in connection with debt collection.

37. All of the conduct by Defendants and/or their employees and/or agents alleged in the preceding paragraphs was done knowingly and willfully and purposefully.

RESPONDEAT SUPERIOR

38. The representative(s) and/or collector(s) at Defendant Oracle were employee(s) and/or agent(s) of Defendant Oracle at all times mentioned herein.

39. The representative(s) and/or collector(s) at Defendant Oracle were acting within the course and/or scope of their employment at all times mentioned herein.

40. The representative(s) and/or collector(s) at Defendant Oracle were under the direct supervision and/or control of Defendant Oracle at all times mentioned herein.

41. The actions of the representative(s) and/or collector(s) at Defendant Oracle are imputed to their employer, Defendant Oracle.

42. It is unknown at this time if the persons named as individual defendants have given their real names. Plaintiffs are naming as Defendants John Does 1-5 as additional responsible persons to be named individually as their identities are discovered and/or confirmed.

COUNT I: VIOLATIONS OF THE FDCPA 15 U.S.C. § 1692, et seq.

43. The previous paragraphs are incorporated into this Count as if set forth in full.

44. The act(s) and omission(s) of Defendant Oracle and its representative(s), employee(s) and/or agent(s) and Defendants Collins, Henman, Judge, Dodson and John Does 1-5 violated 15

U.S.C. § 1692c(b) and 15 U.S.C. § 1692d(1)&(5)&(6) and 15 U.S.C. § 1692e(2)(A) & (4) & (5) & (7) & (10) & (11) & (13).

45. Pursuant to 15 U.S.C. § 1692k Plaintiffs seeks damages, reasonable attorney's fees and costs.

COUNT II: VIOLATIONS OF THE TEXAS FINANCE CODE

46. The previous paragraphs are incorporated into this Count as if set forth in full.

47. The act(s) and omission(s) of Defendant Oracle and its representative(s), employee(s) and/or agent(s) violated Tex. Fin. Code § 392.304(a)(4) & (a)(5)(A) & (a)(5)(B) & (a)(8) & (a)(19).

48. Pursuant to Tex. Fin. Code § 392.403, Plaintiff seeks statutory damages, actual damages, injunctive relief, and reasonable attorney's fees and costs.

COUNT III: INVASION OF PRIVACY (INTRUSION ON SECLUSION)

49. In the alternative, without waiving any of the other causes of action herein, without waiving any procedural, contractual, statutory, or common-law right, and incorporating all other allegations herein to the extent they are not inconsistent with the cause of action pled here, Defendant Oracle and Defendants Defendants Collins, Henman, Judge, Dodson and John Does 1-5 are liable to Plaintiff for invading Plaintiff's privacy. Defendant Oracle and Collins, Henman, Judge, Dodson and John Does 1-5 intentionally intruded on Plaintiffs' solitude, seclusion, or private affairs, and such intrusion would be highly offensive to a reasonable person.

50. Plaintiffs suffered actual damages as a result of Defendant Oracle and Defendant Defendants Collins, Henman, Judge, Dodson and John Does 1-5 intrusion.

COUNT IV: UNREASONABLE COLLECTION EFFORTS BY DEFENDANTS

51. In the alternative, without waiving any of the other causes of action herein, without waiving any procedural, contractual, statutory, or common-law right, and incorporating all other allegations herein to the extent they are not inconsistent with the cause of action pled here,

Defendant Oracle and Defendants Collins, Henman, Judge, Dodson and John Does 1-5 are liable to Plaintiff for its unreasonable collection efforts.

52. Plaintiffs have a right to be free from unreasonable and wrongful collection and/or repossession efforts. *See, e.g.*, *Moore v. Savage*, 359 S.W.2d 95 (Tex. Civ. App. –Waco 1962, writ ref'd n.r.e).

53. Defendant Oracle's and Defendants Collins, Henman, Judge, Dodson and John Does 1-5 collection efforts were unreasonable and wrongful.

54. Defendant Oracle's and Defendants Collins, Henman, Judge, Dodson and John Does 1-5 unreasonable collection efforts proximately caused Plaintiffs to suffer injury, including but not necessarily limited to humiliation and mental anguish.

EXEMPLARY DAMAGES

55. Exemplary damages should be awarded against Defendant Oracle and Defendants Collins, Henman, Judge, Dodson and John Does 1-5 because the harm with respect to which Plaintiffs seeks recovery of exemplary damages resulted from malice (which means that there was a specific intent by Defendant Oracle and Defendants Collins, Henman, Judge, Dodson and John Does 1-5 to cause substantial injury or harm to Plaintiffs) and/or gross negligence (which means that Defendant Oracle's and Defendants Collins, Henman, Judge, Dodson and John Does 1-5 actions and/or omissions (i) when viewed objectively from Defendant Oracle's and Defendants Collins, Henman, Judge, Dodson and John Does 1-5 standpoint at the time of the acts and/or omissions involved an extreme degree of risk, considering the probability and magnitude of potential harm to others and (ii) were such that Defendant Oracle and Defendants Collins, Henman, Judge, Dodson and John Does 1-5 had an actual, subjective awareness of the risk involved but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of others).

JURY TRIAL DEMAND

56. Plaintiffs are entitled to and hereby demands a trial by jury.

DEMAND FOR RELIEF

WHEREFORE, Plaintiff requests that the Court grant the following:

57. Judgment in favor of Plaintiffs and against Defendant Oracle and Defendants Collins, Henman, Judge, Dodson and John Does 1-5 as follows:

a. Actual damages pursuant to 15 U.S.C. 1692k(a)(1) and Tex. Fin. Code § 392.403(a)(2);

b. Statutory damages in the amount of $1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2);

c. Statutory damages in the amount of $100.00 pursuant to Tex. Fin. Code § 392.403(e);

d. Permanently enjoin Defendants following trial of this cause from committing acts in violation of the Tex. Fin. Code as cited herein pursuant to Tex. Fin. Code § 392.403(a)(1);

e. Reasonable attorneys fees and costs pursuant to 15 U.S.C. § 1692k(a)(3) and Tex. Fin. Code § 392.403(b);

f. Exemplary damages pursuant to the common law of Texas, see, e.g. *Waterfield Mortgage Co., Inc. v. Rodriguez,* 929 S.W.2d 641, 645 (Tex. App. 1996);

g. Such other and further relief as the Court deems just and proper.

Dated: March 17, 2016.

Respectfully submitted,

/s/ Robert W. Buchholz

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